

The Utility Regulatory Fee: North Carolina Utilities Commission Perspective

Committee on the Assessment of Regulated and
Non-Regulated Industry Utility Fees

December 19, 2013

Chairman Edward S. Finley, Jr.
North Carolina Utilities Commission

Who We Are



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Presentation Overview



- Commission Overview – Purpose, Organization, and History
- The Regulatory Fee – General Overview and History
- Commission Activity – Who is Regulated and How the Budget is Used
- Telecommunications – Overview and Regulatory Fee Facts

Commission Overview: Regulation of Public Utilities



- Purpose: protect the public's interest in receiving adequate service at reasonable rates.
- Traditional regulatory bargain: utilities exchange benefit of monopoly franchised service territory for obligation to provide adequate service at reasonable rates.
- Commission's regulatory obligation: to be fair and reasonable to public utilities and their customers.
- Commission's regulatory tools:
 - certification of new facilities
 - rate establishment or review
 - service quality oversight
- Recent trends: regulation of certain utility industries and services by the Commission has become more complex due to changes in State and Federal law and rules, and industry trends. Certain utility services have been fully or partially deregulated.

Commission Overview:

History of NC Utilities Commission

- Oldest regulatory body in state government: evolved from Railroad Commission (1891) to Corporation Commission (1899) to Utilities Commission (1933)
- History of significant legislative grants of, or limitation on, regulatory authority:
 - Railroad – 1891
 - Telephone – 1893
 - Electric, Gas, & Water – 1913
 - Wastewater – 1917
 - Housing – 1935
 - Hospitals – 1943
 - Buses/Brokers – 1949
 - Motor Carriers & Ferries – 1963
 - Electric Generation – 1965
 - Electric Membership Cooperatives – 1965
 - Payphone Service Providers - 1985
 - Long Distance Telephone Competition – 1985
 - Telephone Shared Tenant Service – 1987
 - Local Telephone Competition – 1995
 - Motor Carriers of Property, except Household Goods, Deregulation – 1995
 - Railroad Transferred to Dept. of Transportation – 1996
 - Water Resale – 1996
 - Charter Bus Deregulation – 1998
 - Long Distance Telephone Rate Deregulation – 2003

Commission Overview: NCUC Organization



- Administrative agency of General Assembly; legislative oversight by House Public Utilities and Energy Committee, Senate Commerce Committee, and Joint Legislative Commission on Governmental Operations.
- Seven members: appointed by Governor, subject to confirmation by General Assembly. Terms of five Commissioners now serving are staggered, remaining portions of eight-year terms. Terms of two most recently appointed Commissioners are six-year terms. (G.S. 62-10)
- Chairman: appointed by Governor, four-year term, organizes Commission's work. *Ex officio* member of Geographic Information Coordinating Council. Membership responsibilities currently shared among Commissioners. (G.S. 62-12, 13)

Commission Overview: NCUC Organization *cont.*



- Commissioners are subject to standards of judicial conduct and prohibited by law from engaging in any other employment, business or profession while in office (*G.S. 62-10(i)*)
- Commission employs up to 65 people, current staffing is 51, organized among three divisions:
 - Legal, Operations, and Fiscal Management & Administrative
- Certified FY2013 annual budget: \$7,699,263

NCUC budget:	\$ 6,983,949
Gas Pipeline Safety budget:	\$ 605,060
NCUC ARRA Grant (Dept. of Energy):	\$ 110,254

 - Gas Pipeline Safety is housed in Commission and receives partial federal reimbursement
 - NCUC is a fee-funded agency, supported by regulatory fee percentage established by General Assembly annually and applied to the jurisdictional revenues of public utilities (*G.S. 62-302*)
 - The Public Staff maintains its own budget which is separate from the Commission's budget but it is funded by the same regulatory fee

The Regulatory Fee: General



- The Public Staff and the Commission are funded by a regulatory fee established in G.S. 62-302.
- The fee is set by the General Assembly each year as a percentage that is applied to each “public utility’s North Carolina jurisdictional revenues.”
- The fee is currently set at .13% for public utilities.
- The fee was increased in the 2013 budget, previously the fee had been .12%, it had been at that level since since July 2, 2004.
- The regulatory fee is not set based on volume of regulation; all regulated entities pay the same %.

The Regulatory Fee: General *cont.*



The following chart shows the regulatory fee broken down by sector for the 12-Month Period Ending December 31, 2012:

<u>Sector</u>	<u>Jurisdictional Revenues</u>	<u>Regulatory Fee Receipts</u>	<u>% of Total Receipts</u>
Electric	\$8,330,395,160	\$10,196,526	74.1%
Telephone	\$1,585,206,188	\$1,917,293	13.9%
Natural Gas	\$1,142,885,686	\$1,371,538	10.0%
Water	\$140,841,820	\$173,994	1.3%
Household Movers	\$49,778,333	\$62,030	.5%
Other	\$26,507,279	\$33,072	.2%
Total	\$11,275,614,467	\$13,754,453	100%

The Regulatory Fee: Timeline



The Commission and the Public Staff are currently facing challenges to their budget. Several factors outside of the scope of the Commission and the Public Staff contribute to these challenges. The following timeline provides context to the Commission's budget process:

- Prior to 2009, the Commission and Public Staff budget operated with an accumulated surplus from the regulatory fee, the surplus was leveraged to create an additional revenue stream through returns on investment.
 - The surplus allowed the Commission to budget appropriately, as actual fee revenues vary based on weather and other conditions that affect a utility's jurisdictional revenues.
- Despite the statutory requirement that the regulatory fee be used “only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public”, in 2009 the surplus was swept into the General Fund:
 - Eliminated the flexibility to adapt to changing revenues.
 - Eliminated the additional revenue stream created by the return on the surplus.

The Regulatory Fee: Timeline *cont.*



- On September 18, 2012, the Commission and the Public Staff were notified by Commerce Fiscal Management (FM) that for the Biennium Budget beginning July 1, 2013, the Commission and the Public Staff needed to reduce their approved operating budget from \$16.1M to \$14M, to match projected receipts.
- On October 8, 2012, the Commission and the Public Staff submitted to Commerce FM a proposal to eliminate 17 vacant positions, which would reduce the operating budget by \$1.1M, a cut of 7%, and a staff reduction of 11% (Commission – eliminates 9 positions out of 64; Public Staff – eliminates 8 positions out of 89). Based on an exchange with Commerce on February 11, 2013, this elimination of positions was placed on hold, but the Commission would still need to balance its budget within the \$14M in revenue.
- The Commission and the Public Staff were not able to further reduce the operating budget by the remaining \$1M shortfall.

The Regulatory Fee: Timeline *cont.*



- The Commission and the Public Staff jointly requested that the Governor and the General Assembly set the regulatory fee at .13% in the 2013 budget, providing an additional \$1M in revenue, which would balance the Commission and the Public Staff budget with projected receipts.
 - Were no increase granted, the Commission/Public Staff would have been forced to prepare a Reduction in Force (RIF) plan to reconcile the operating budget with projected receipts at the current percentage.
- The 2013 Budget increased the regulatory fee to .13% as requested.
- G.S. 62-133.5(h) and (m) companies have now indicated they will be pursuing legislation to reduce their regulatory fee percentage. G.S. 62-133.5(h) and (m) companies account for \$1.3 million in revenues, or 10% of the Commission's budget.
- Few additional vacancies can be eliminated on top of the current proposal, thus, were the Commission to lose all, or part, of the G.S. 62-133.5(h) and (m) company regulatory fee revenues it would result in a corresponding RIF.

Commission Activity: NCUC's Responsibilities & Procedures



- For the 12-Month Period Ending 6/30/13:
 - 2,530 formal proceedings instituted before NCUC
 - 58 hearings in contested cases
 - 11,417 filings in Chief Clerk's office
 - 2,704 orders issued
 - 2,031 open dockets as of 6/30/13
- Appeals from general rate case decisions to NC Supreme Court; all others to NC Court of Appeals (absent federal jurisdiction)
- NCUC conducts proceedings pursuant to federal law and participates in proceedings before federal courts and regulatory agencies (*G.S. 62-48*)

Commission Activity: Regulated Entities

(As of 3/31/13)

	<u>QTY</u>
BUS / BROKER	19
ELECTRIC	5
ELECTRIC COOPERATIVES	31
ELECTRIC MERCHANT PLANTS	8
ELECTRIC RESELLER	7
FERRIES	17
NATURAL GAS:	
– LOCAL DISTRIBUTION COMPANIES	5
– INTRASTATE PIPELINE	1
MOTOR CARRIERS OF HOUSEHOLD GOODS	255
SMALL POWER PRODUCERS	281
TELEPHONE:	
– COMPETING LOCAL PROVIDERS	173
– INCUMBENT LOCAL EXCHANGE COMPANIES	16
– LONG DISTANCE CARRIERS	306
– PAYPHONE SERVICE PROVIDERS	67
– SHARED TENANT SERVICES	19
WATER / WASTEWATER RESELLERS	872
WATER / WASTEWATER	<u>119</u>
TOTAL	2,201

Commission Activity: Industry Revenue Profile



- FY2012 Jurisdictional Revenues: \$11.015 billion
 - Electric: \$8.065 billion
 - Telecommunications: \$1.633 billion
 - Includes Local and Long Distance Telephone Companies, Payphone Service Providers, and Shared Tenant Service Providers
 - Natural Gas: \$1.120 billion
 - Water and Wastewater: \$141 million
 - Includes Water/Wastewater Resale Companies
 - Transportation: \$56 million
 - Includes Brokers, Buses, Ferries, and Household Goods (HHG) Carriers

Commission Activity: Filings & Orders by Industry Group

(For the 12-Month Period Ending 6/30/13)

	<u>Filings</u>	<u>Orders</u>
• Electric	2,220	435
• Telephone	1,846	246
• Natural Gas	506	82
• Water/Wastewater	1,678	997
• Household Goods Carriers	795	177
• Small Power Producers	3,857	657
• Other (Bus/Broker, Electric Merchant Plant, EMC, Ferry, Payphone Provider, Renewable Energy Facilities, & Misc.)	<u>515</u>	<u>110</u>
TOTAL	11,417	2,704

Commission Activity: Commission Budget Use:

85 % of the Commission's budget is spent on salaries:

- Commissioners
- Operations
 - Electric and Telecommunications
 - Natural Gas
 - Water Sewer and Transportation
- Legal
- Clerk's Office
- Fiscal Management and Administrative Division
 - Court Reporters
 - Information Technology

Other Expenses include fixed costs such as rent to the State for building space, travel, office supplies etc.

Commission Activity: Not All Dockets are Equal:



Dockets vary in scope, size and workload – A few examples are listed below:

- Rate Cases: Highly labor intensive, numerous intervenors, expert witnesses, etc.
 - E-7, Sub 989, Application of Duke Energy Carolinas, LLC, for Adjustment of Rates and Charges Applicable to Electric Utility Service in North Carolina -Filed 6/1/2011, still ongoing, Order on Remand has been appealed, includes 100s of filings.
- Reports of Proposed Construction – Small Power Producers report to the Commission but no action is taken afterwards unless the facility is over 2 MW or registers as a renewable energy facility.
- Eligible Telecommunications Carrier designations – designate carriers eligible for federal lifeline funds as determined by Federal Communications Commission criteria- continually ongoing.

Commission Activity: No Day is the Same:



Commissioners and staff's days can include the following:

- Reviewing filings, testimony, and motions;
- Preparing for and attending hearings;
- Ruling on motions;
- Drafting orders;
- Reviewing federal actions affecting North Carolina,
 - including potential interventions with Federal Energy Regulatory Commission;
- Staff briefings;
- Weekly hearings for routine and procedural matters;
- Responding to requests for declaratory rulings;
- Travel for hearings across the State.

Telecommunications: Basic Facts- Telecom Utilities

- 16 Incumbent Local Exchange Companies (ILECs)
(4 ILECs price-plan regulated, 2 ILECs rate-of-return regulated, 9 ILECs Subsection (h) price-plan elected, effective upon filing notice (*G.S. 62-133.5(h)*), 1 ILEC Subsection (m) price-plan elected, effective upon filing notice (*G.S. 62-133.5(m)*))
- 174 Competing Local Providers (CLPs) - Rates are not regulated; may raise rates after 14 days customer notice
- 305 Interexchange Long Distance Carriers (IXCs)
 - Senate Bill 814, signed into law on 5/30/03, found long distance services sufficiently competitive and no longer subject to regulation by the Commission. However, the Commission has authority regarding certification and enforcement of slamming and cramming rules.
- 68 Payphone Service Providers (PSPs)
- 18 Shared Tenant Services (STS) Providers
- Commission does not regulate: Telephone Membership Corporations, Cable and Satellite, Commercial Mobile Radio Service (*includes cellular and pagers*), Data and Internet Service Providers, Long Distance Providers (*with the exceptions of certification and enforcement of slamming and cramming rules*), Rates, terms, conditions, or availability of retail services of Subsection (h) and Subsection (m) price-plan entities (ILEC or CLP)

Telecommunications: Regulatory Fee Facts



The Commission currently regulates 14 companies under G.S. 62-133.5(h) and 7 companies under G.S. 62-133.5(m). Despite recent changes to the regulatory environment for telephone companies, the Commission and the Public Staff still have several regulatory responsibilities in regards to telephone companies.

The following information provides a context for the volume of work handled by the Commission with regard to G.S. 62-133.5(h) and (m) companies:

- For calendar year 2012 there were 164 filings and 49 orders for companies regulated under G.S. 62-33.5(h) and 163 filings and 69 orders for companies regulated under G.S. 62-133.5(m);
- For calendar year 2012 there were 1,248 filings and 29 orders for generic telephone dockets.
- The Commission has 3 full time employees, out of a total staff of 51 (including administrative positions), whose primary responsibility is telephone regulation.
- The Commission and the Public Staff participate in matters concerning federal issues that pertain to the G.S. 62-133.5(h) and (m) companies, in several matters this participation is required by Federal law.
- Compared to Commissions in other states the staffs of the Commission and the Public Staff are relatively small. A minimum threshold is necessary to address telecommunication issues irrespective of volume or frequency.

Telecommunications: Regulatory Fee Facts



The following are examples of issues that the Commission and the Public Staff encounter in regulating G.S. 62-133.5(h) and (m) companies:

- Consumer complaints (over 85% of telephone complaints involve G.S. 62-133.5(h) and (m) companies);
- Commission oversight over implementation of the FCC's intrastate switched access charges reform (Docket No. P-100, Sub 170);
- Petitions seeking the Commission to overturn a decision from NeuStar (the numbering administrator) to get access to numbering resources;
- Approval of an incumbent local exchange company's request to discontinue service to a competing local provider that has not paid for wholesale services;
- Arbitration of and approval of interconnection agreements and amendments;
- Complaints over terms of interconnection agreements;
- Lifeline program implementation issues (Docket No. P-100, Sub 133f);
- Review and approval of tariffs for wholesale service offerings;
- Performance measures for competing local provider wholesale access to the larger incumbent local exchange companies (Docket No. P-100, Sub 133k);
- Unbundled network elements (Docket No. P-100, Sub 133d);
- Consumer education and awareness, including education on telecommunications relay, understanding different types of communications services, assisting senior citizens with technologies, and consumer friendly practices of providers;
- Decisions on new area codes in the State.

Questions/Contact



Questions?

Contact:

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